Environmental Assessment/Regulatory Impact Review/Regulatory Flexibility Analysis

For

A Program to Monitor Time-Area Closures in the Pacific Coast Groundfish Fishery

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1.0 INTRODUCTION

The groundfish fishery in the Exclusive Economic Zone (EEZ), 3 to 200 miles off shore, off the Washington-Oregon-California (WOC) coast is managed under the Pacific Coast Groundfish Fishery Management Plan (FMP). The Pacific Coast Groundfish FMP was prepared by the Pacific Fisheries Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (subsequently amended and renamed the Magnuson-Stevens Fishery Conservation and Management Act). The Pacific Coast Groundfish FMP was approved by the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, on January 4, 1982 and became effective on September 30, 1982.

Actions taken to amend FMPs or to implement regulations to govern the groundfish fishery must meet the requirements of several federal laws, regulations, and executive orders . In addition to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), these federal laws, regulations, and executive orders include the: National Environmental Policy Act (NEPA), Regulatory Flexibility Act (RFA), Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), Coastal Zone Management Act (CZMA), Paperwork Reduction Act (PRA), Executive Orders (E.O.) 12866,12898, 13132, and 13175, and the Migratory Bird Treaty Act.

The regulations which implement NEPA permit NEPA documents to be combined with other agency documents to reduce duplication and paperwork (40 CFR§§1506.4). NEPA, E.O. 12866 and the RFA require a description of the purpose and need for the proposed action as well as a description of alternative actions that may address the problem. The purpose and need and general background materials are included in Section 1 of this document. Section 2 describes a reasonable range of alternative management actions that may be taken under the proposed action. In accordance with NEPA requirements, Section 3 contains a description of the physical, biological and socio-economic characteristics of the affected environment. While section 4 examines the physical, biological and socio-economic impacts of the management options as required by NEPA, E.O. 12866 and the RFA. Section 5 addresses the consistency of the proposed actions with the FMP, Magnuson-Stevens Act, ESA, MPA, CZMA, PRA, E.O. 12866, E.O. 13175 and the Migratory Bird Treaty Act. The Regulatory Impact review required by E.O. 12866 to address the economic significance of the action, and the Regulatory Flexibility Analysis required by the RFA to addresses the impacts of the proposed actions on small businesses are found in Section 6. Sections 7 presents a list of individuals who assisted in preparing the EA and Section 8 is the list of references. The NEPA conclusions or the Finding of No Significant Impact will be prepared as a memorandum that accompanies this document.

1.1 Proposed Action

The proposed action is to require vessels registered to limited entry permits for the Pacific Coast groundfish fishery to carry and use mobile Vessel Monitoring System (VMS) transceiver units while fishing in the EEZ off the coasts of Washington, Oregon and California. In addition, the proposed action requires the operator of any vessel registered to a limited entry permit, and any other commercial or tribal vessel using trawl gear; including exempted gear used to take pink shrimp, spot and ridgeback prawns, California halibut and sea cucumber, to identify their intent to fish within a conservation area specific to their gear type, in a manner that is consistent with the conservation area requirements. This action will enhance monitoring of compliance with large-scale depth-based restrictions for fishing across much of the continental shelf and is intended to further the conservation goals and objectives of the Pacific Coast Groundfish Fishery Management Plan (FMP) by allowing fishing to continue in areas and with gears that can harvest healthy stocks with little incidental catch of low abundance species (overfished species).

1.2 Background

It is the responsibility of fisheries management to maintain sustainable fisheries by: researching sustainable catch levels; developing fishery specifications and management measures (regulations); monitoring and overseeing fishery harvests; enforcing fishery regulations and prosecuting those who engage in illegal activities.

Fishing fleets are routinely monitored to ensure that vessel operators comply with fisheries regulations. Traditional monitoring techniques include the monitoring of fisheries from air and surface craft, observer programs, and analysis of catch records and vessel logbooks. Because VMS can be used to deter illegal activity, target investigations, and direct patrols, the efficiency of traditional monitoring techniques can be dramatically enhanced by the addition of VMS. VMS is a tool that is commonly used to monitor vessel activity in relationship to geographical defined management areas where fishing activity is restricted. VMS transceivers installed aboard vessels automatically determine the vessel's location and transmit that position to a processing center via a communication satellite. At the processing center, the information is validated and analyzed before being disseminated for fisheries management, surveillance, and enforcement purposes. VMS transceivers document the vessel's position using Global Positioning System (GPS) satellites. Depending on the defined need, position transmissions can be made on a predetermined schedule or upon request from the processing center. VMS transceivers are designed to be tamper resistant. The vessel operator is unable to alter the signal or the time of transmission and in most cases the vessel operator is unaware of exactly when the unit is transmitting the vessel's position. Figure 1.1 illustrates the flow of information from a VMS system.

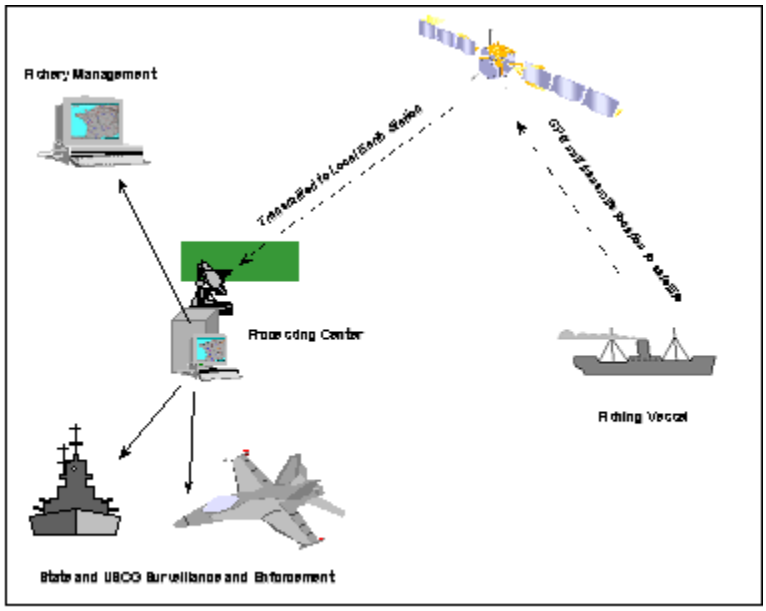

Figure 1.1 Example VMS Scenario

On September 23, 1993, NMFS published proposed VMS standards at 58 FR 49285. On March 31, 1994, NMFS published final VMS standards at 59 FR 151180. These notices stated that NMFS endorses the use of VMS and defined specific criteria for using VMS (see Appendix A) as a fishery management tool. On September 8, 1998, NOAA published a request for information (RFI) in the Commerce Business Daily in which it stated minimum VMS specifications necessary for approval by NOAA. The RFI requested that responses from interested VMS providers include supporting information which would demonstrate that the VMS could meet the minimum specifications established by the NOAA Office for Law Enforcement (OLE).

NMFS requires that VMS systems meet the defined standards to assure compatibility with the national monitoring center, while recognizing the need to promulgate regulations and approve systems on a fishery-by-fishery basis. All approved units must be consistent with the basic features identified and

endorsed by NMFS, however, additional features may be added to better meet the specific needs of a particular fishery. VMS transceiver units approved by NMFS are referred to as type-approved.

The following are NMFS's minimum specifications for VMS systems used for fishery management and enforcement purposes:

- the VMS unit must be tamper proof such that it does not permit the input of false positions;

  the equipment must be fully automatic and operable at all times;

  the VMS unit must be accurate to within 400 m (1,300 feet) and capable of tracking a vessel throughout the entire geographical area where the management measures apply;

  the VMS unit must be capable of transmitting and storing information such as vessel identification, date, time, latitude, longitude, speed and bearing;

  the VMS unit must provide accurate position transmissions;

  the VMS unit must allow position transmissions to be set or changed remotely and allow NMFS to poll vessels (to freely query a vessel's transmitter for a position); and.

  under certain conditions, the VMS units may be required to provide two-way message communications between the ship and shore (one-way communication only allows the vessel to transmit positions from the ship to shore). Such communications would include, but not be limited to transmitting and receiving full or compressed data messages.

Amendment 13 to the Pacific Coast Groundfish FMP recognized the value of VMS in enforcing closed areas that are established to reduce bycatch levels. Amendment 13 also identified VMS as a technological tool that could be used to improve bycatch management by providing fishing location data that can be used in conjunction with observer data collections.

There were several mitigating factors that emerged during the development of the depth-based management regime adopted for 2003 fishery. Implementation VMS system, used to track movement of vessels through and within depth zones, was one such factor.

1.3 Purpose and need for action

Time and area closures have long been used to restrict fishing activity in the Pacific Coast groundfish fishery to keep harvests within sector allocations, at sustainable levels, or to prohibit the catch of certain species. Until September 2002, geographically defined areas tended to be nearshore or defined by a simple longitude and latitude lines. On September 13, 2002, NMFS took emergency action to define depth-based management measures (67 FR 57973). The emergency rule restricted trawling north of 40°10' N. lat., in the months of September though December 2002, to depths where darkblotched rockfish was not expected to be encountered. These measures were taken to reduce the incidental catch of darkblotched rockfish, in order to keep total catch below the 2002 Optimum Yield (OY) level. The depth-based area, referred to as the Darkblotched Rockfish Conservation Area, was based on bottom depth ranges where darkblotched rockfish commonly occur (100-250 fm) and used a series of latitudinal and longitudinal coordinates to define a large irregularly shaped geographical area that extends far offshore. This resulted in much of the fishing activity being moved far offshore and beyond the range of State enforcement capabilities.

For 2003, the Council sought a management strategy that would allow fishing to continue in areas and with gear that can harvest healthy stocks with little incidental catch of low abundance species (overfished species). Recent stock assessments for four overfished species, bocaccio, yelloweye, canary and darkblotched rockfish, indicated that little surplus production is available for harvest. Measures must be taken to protect these stocks and rebuild them to sustainable biomass levels. Therefore, the Council recommended that NMFS define additional management areas for the groundfish fishery that are based on bottom depth ranges where these low abundance species are commonly found. For 2003, large-scale

depth-related areas, referred to as groundfish conservation areas, will be used to prohibit or restrict both commercial and recreational fishing across much of the continental shelf. Deep-water fisheries on the slope and nearshore fisheries will be permitted, in areas seaward or shoreward of the depth-based conservation areas.

The boundaries of the groundfish conservation areas are complex, involving hundreds of points of latitude and longitude to delineate nearshore and offshore fathom curves. The areas are vast, extending along the entire West Coast from Canada to Mexico, and the weather and sea conditions are frequently harsh. Some fishing, such as midwater trawling for pelagic species, shrimp trawling with finfish excluders and various state-managed fisheries, will be allowed to occur in the conservation areas. In addition, vessels intending to fish seaward of the westernmost boundary of a conservation area will be allowed to transit through the areas providing the gear is properly stowed.

Ensuring the integrity of conservation areas using traditional enforcement methods is especially difficult when the closed areas are large-scale and the lines defining the areas are irregular. Furthermore, when some gear types and target fishing are allowed in all or a portion of the conservation area while other fishing activities are prohibited it is difficult and costly to effectively enforce closures using traditional methods. Scarce State and Federal resources also limit the use of traditional enforcement methods. To allow for a more liberal depth-based management regime, as proposed by the Council for 2003, it is necessary to take action to establish a monitoring program to ensure the integrity of these large irregularly shaped depth-based conservation areas. This action is intended to create a program that will promote compliance with regulations that prohibit some fishing activities in conservation areas while allowing legal fishing activity that occurs within conservation areas to be effectively monitored. The purpose of this Environmental Assessment (EA) is to analyze components of a program that can used to monitor groundfish conservation areas.

1.4 Scoping Process

The purpose of the scoping process is to determine the range of issues that the NEPA document (in this case the EA) needs to address. This allows the preparation of the document to be effectively managed. Scoping is intended to ensure that problems are identified early and properly reviewed, that issues of little significance do not consume time and effort, that the draft NEPA document is thorough and balanced. The scoping process should identify the public and agency concerns; clearly define the environmental issues and alternatives to be examined in the NEPA document including the elimination of nonsignificant issues; identify related issues; and identify state and local agency requirements that must be addressed. An effective scoping process can help reduce unnecessary paperwork and time delays in preparing and processing the NEPA document.

On June 3-4, 2002 the Council's Allocation Committee met to discuss the development of management measures for the 2003 groundfish fishery. At this public meeting, representatives from NMFS OLE provided information on VMS technology and different monitoring options that could be implemented to support compliance of depth-based management measures. The cost of such systems and who would bear those costs, were key issues during the Allocation Committee's discussions. The public was invited to comments and discuss the monitoring needs of the Pacific Coast groundfish fishery in relation to management measure proposed for 2003. During the discussion, consideration was given to: the timeliness of VMS position reports, geographical areas proposed to be monitored; the size and class of vessels that may be monitored; the level of communications with the vessels needed while they are at sea; safety concerns; and ways to address transiting of closed areas. Following this discussion, the Allocation Committee recommended that the Council consider using risk-adverse measures such as VMS or observers to monitor fisheries that are most likely to encounter bocaccio, yelloweye or canary rockfish. These are the three most constraining species in 2003.

At its June 2002 meeting, the Council reviewed VMS recommendations from the Allocation Committee and Enforcement Consultants. Because of its cost effectiveness, the Enforcement Consultants recommended that VMS be considered as a monitoring tool for closed areas. The Enforcement

Consultants prepared a worksheet that identified VMS issues, system specifications, and listed VMS questions that the Council would need to consider if it chose to use VMS as a monitoring tool. These documents and committee reports were made available to the public and the public was invited to provide comment to the Council. Following Council discussion, the Council recommended forming a committee that included enforcement representatives, industry members, and biologists to review questionnaire and provide further direction to the Council on VMS development.

On July 16, 2002 , enforcement representatives met in to discuss VMS and refine a VMS proposal. VMS equipment requirements, approximate fleet sizes by fishing sectors likely to be considered for VMS units, and estimated the cost associated with purchase, installation, and operation of VMS units were identified. The Allocation Committee held a public meeting on August 28-29, 2002 in which enforcement representatives were available and VMS and observers were discussed as methods of monitoring the 2003 fishery. This was a public meeting in which public input was invited. A summary report of these meetings were presented and made available for public review at the Council's September 2002 meeting. The Council's Groundfish Advisory Sub-panel, discussed the concept of a VMS monitoring system and identified the following issues: 1) need to establish a VMS committee to help NMFS design and implement VMS program; 2) program should begin by requiring only a small portion of the fleet to carry VMS; 3) equipment manufactures need to meet with fishermen to address technical questions; 4) the need to recognize diversity within the fleet when implementing a program; and 5) the federal government should provide transceiver units. After reviewing the information provided by its advisory committees and the public, the Council recognized that a VMS program would be beneficial to the management of the groundfish fishery, specifically, in maintaining the integrity of new, depth-based management measures. The Council requested that NMFS further analyze a VMS program, develop implementing regulations, and create a VMS committee composed of enforcement and industry representatives to work with NMFS on development of a monitoring program.

On October 11,2002, the Council's VMS committee held a public meeting in Portland, Oregon and identified the goals and objectives of a monitoring program; identified desirable characteristics of a declaration reporting system; examined VMS coverage options, including priorities in coverage; and VMS unit costs and cost sharing. At the Council's November meeting, a VMS committee report was made available to the Council, its advisory bodies, and the public. At this same meeting, the Council recommended that NMFS move forward with a proposed rule to implement a VMS program for the Pacific Coast groundfish fishery in 2003 and identifeid its preferred alternatives.

On December 18, 2002, the Council's VMS committee held a public meeting in Portland Oregon. During this meeting the committee reviewed a draft rule that would implement a VMS program and declaration requirements.